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C O N F I D E N T I A L SECTION 01 OF 04 GUATEMALA 000781

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E.O. 12958: DECL: 03/25/2013

TAGS: SNAR PGOV GT

SUBJECT: RE-CERTIFICATION BENCHMARKS DEMARCHE DELIVERED

REF: A. SECSTATE 66351

1B. GUATEMALA 770

Classified By: Ambassador John R. Hamilton. Reason 1.5 (B&D).

11. (C) Summary: As requested in Ref A, the Ambassador discussed counter-narcotics re-certification benchmarks in detail with President Portillo on March 22. The Ambassador gave Portillo a copy of the diplomatic note on benchmarks (full text para 10), rebuffed a request for material assistance to the Guatemalan military, and warned that the use of torture against narco-traffickers is unacceptable to the USG and would be extremely prejudicial to Guatemala's chances for re-certification. Portillo raised no objections to the benchmarks and promised to investigate MINUGUA's allegations of the use of torture and to stop any further use of torture in the war against narcotics trafficking. DCM met separately with Vice Foreign Minister Jorge Perez and Secretary for Strategic Analysis Arturo Montenegro to discuss

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the benchmarks. Perez proposed a follow-up meeting on benchmarks between GOG vice ministers and the DCM and NAS on March 26. We anticipate that the GOG will formally agree to the benchmarks. End Summary.

12. (C) The Ambassador's meeting with Portillo was reported in Ref B. MINUGUA chief Koenigs had told the Ambassador on March 21 that there was strong evidence of the use of torture and illegal detention (for at least eight hours) against three narco-trafficking suspects on March 6, in Zacapa province. MINUGUA's conclusions in this case were based on a joint investigation by its regional office in Zacapa in conjunction with the Human Rights Ombudsman's representative.

To compile its report, MINUGUA interviewed the suspects/victims, police and anti-narcotics (SAIA) police sources. We have been unable to corroborate MINUGUA's report with official sources in the SAIA or the military, who deny any involvement with torture in this case. Nevertheless, based on discussions with unofficial sources, MINUGUA's allegations appear credible.

13. (U) DCM met with Perez and Montenegro on March 19, accompanied by Acting NAS Chief and PolOff. He provided Spanish and English versions of the benchmarks received from the Department, commenting that these benchmarks are not substantially different from what had previously been under discussion.

14. (SBU) The two GOG officials made the following comments in response to specific benchmarks:

-- SAIA Institution Building: Montenegro provided a copy of a general order from the National Civil Police establishing the Guatemalan Narcotics Police (SAIA) which outlined basic selection requirements for entry into the unit. Montenegro asked if this order satisfied the benchmark requirements. Acting NAS chief noted that the order was a partial document of a larger regulation and that the requirement for periodic urinalysis and polygraph testing would be contained in another part of the regulation which was not presented. Perez distinguished between "formal versus real" compliance, noting that issuing an order may satisfy the formal requirement, but real compliance would involve verification of implementation. Montenegro acknowledged this point, and added that the order indicated the GOG's intention to comply.

-- Extradition: Perez asked what time frame is implied in the phase "over the coming year." DCM replied that it was the next 12 months.

-- Precursor Chemicals: Montenegro confirmed that the regulations have already been passed.

15. (SBU) Perez noted that the benchmarks now total nine vs. the ten previously discussed, since the issues of seizures and prosecutions have been combined in the current document. Montenegro said the order of the benchmarks has apparently changed. Previously, the first benchmarks under discussion were those under the direct responsibility of the Executive. Now they are mixed. Perez said that is not a problem; the benchmarks are a GOG, not solely Executive responsibility. He said he has not discussed this yet with the Foreign Minister, but he will propose that the GOG assign primary responsibility for completion of each benchmark to the

responsible ministry, and name an individual responsible, thereby creating a matrix of goals and accountable institutions and individuals.

16. (SBU) Perez said the Portillo Administration has "a mountain" of demands on it in its last year, but wants to make substantial progress meeting the benchmarks by September, 2003. Re-certification is important to the GOG's bilateral relationship with the U.S., the GOG's financial interests (Comment: this is a reference to stalled efforts to float Eurobonds. End Comment.), and also a national interest in combating narco-trafficking and related corruption.

17. (SBU) Perez acknowledged that the recertification effort will require coordinated action by the Executive, the Public Ministry and the judiciary. Given shortage of prosecutors and resources, progress will be difficult, and will require shifting prosecutorial assets to this task in the next semester. DCM asked if the Public Ministry and judiciary are willing to do so. Perez said yes. He said FM Gutierrez has two priority areas for transition to the next government: the Peace Accord Agenda and the Counter-narcotics Matrix. He asked if the USG would object to the GOG sharing the matrix with other countries who might be able to provide support (he mentioned Japan in the context of better port management, and Spain to train police). The DCM said we would have no objection to the GOG doing this once we have a formal agreement on benchmarks. Perez proposed, and the DCM accepted, a meeting between GOG vice ministers, the DCM and NAS on March 26 to discuss the benchmarks further.

18. (SBU) Secretary Montenegro concluded by saying the new benchmarks offered "no surprises" and indicated general agreement on the substantive issues. Montenegro said that he hopes to develop a national counter-narcotics strategy for Cabinet approval, to coordinate GOG policy and create a policy framework useful to this and the next government. He is aware of the Government of Mexico's strategy document, and was told of the USG strategies. He asked for NAS collaboration in this effort, which we to.

Comment

19. (SBU) We anticipate no major roadblocks to formal Guatemalan agreement to these benchmarks. End Comment.

110. (U) Text of Diplomatic Note on Benchmarks provided to GOG:

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of Guatemala and has the honor to refer to conversations between our two governments on the matter of counter-narcotics cooperation.

To comply with current United States law establishing the certification mechanism and to respond to calls for a more transparent process, the Embassy of the United States takes advantage of this opportunity to advise the Government of Guatemala of U.S. law governing the certification process and both generic and specific certification standards.

The Embassy wishes to establish at the outset that the International Narcotics Control Strategy Report (INCSR) and other U.S. policy documents on drug control underscore U.S. efforts to curb its own drug consumption problems. Illegal drugs exact an enormous toll on U.S. society: 52,000 lives annually and some \$160 billion dollars a year in economic costs. Sixteen million Americans use drugs on a current basis, and 5.6 million meet the criteria for needing drug treatment. United States National Drug Control Policy commits unprecedented resources to the treatment of drug abuse and the reduction of demand: some \$5.2 billion in Fiscal Year 2002. President Bush has announced the United States goal of reducing drug use by 10 percent in two years and 25 percent in five years. Recent data from the University of Michigan's "Monitoring the Future" survey show the first significant downturn in youth drug use in nearly a decade, with reduced drug use noted among 8th, 10th, and 12th graders.

No domestic policy of demand reductions can succeed, however, while the supply of drugs into the United States continues unrestrained. For that reason, we also place enormous importance on cooperation with other countries. The United States Government's aim in approaching the Government of Guatemala now is to establish a dialogue regarding the United States and Guatemala counter-narcotics objectives for the near term and to present clear objectives that, if met, will be given due consideration by the U.S. in evaluating compliance with the goals and objectives of the 1988 UN convention and the United States and Guatemala bilateral counter-narcotics program. The Embassy of the United States is pleased with the exchanges held to date and will continue to dialogue with the Government of Guatemala on this subject throughout the year. The United States Government is

prepared to review the original decision regarding Guatemala's counter-narcotics cooperation in response to significant progress in all areas of the shared counter-narcotics agenda. The benchmarks outlined in this diplomatic note are not "all or nothing" mandates but, rather, represent a series of concrete steps toward a definite target. Significant progress on taking these steps would demonstrate the will of the Government of Guatemala to meet its international counter-narcotics obligations.

The United States Government's assessment of a country's counter-narcotics performance is independent of levels of U.S. bilateral counter-narcotics assistance to that country. However, within budgetary limitations, the United States Government will seek to be as responsive as possible to the Government of Guatemala's requests for drug control assistance.

Under U.S. law, each country identified by the President as a major illicit drug producing or drug-transit country is subject to the annual certification process. Under this process, the President determines, based upon overall counter-narcotics performance, whether the country has "failed demonstrably" during the previous 12 months to make substantial efforts to adhere to their obligations under international counter-narcotics agreements and take the counter-narcotics measures specified in U.S. law. The certification decisions are made by the President upon the recommendations of the Secretary of State, with input from other concerned United States Government agencies.

In order not to be found as having "failed demonstrably," a country must take meaningful and committed actions against narcotics trafficking and related criminal activity. Key criteria considered in the certification process include:

- (1) Performance in areas identified in the 1988 UN drug convention: namely, cultivation/manufacturing; consumption/demand reduction; trafficking; illicit crop eradication/substitution; interdiction and law enforcement cooperation; asset seizure; extradition and mutual legal assistance; drug treatment; control of precursor/essential chemicals; and money laundering.
- (2) Performance in accomplishing goals described in any applicable bilateral narcotics agreement with the United States, or a multilateral narcotics agreement;
- (3) Performance in preventing and punishing public corruption, especially by senior government officials that facilitates the production, processing, or shipment of drugs and other controlled substances, or that discourages the investigation or prosecution of such acts; and
- (4) The United States Government is very interested in efforts to improve regional cooperation and regional activities to support the goals of the 1988 UN drug convention. The Government of the United States will consider such activities and initiatives as we evaluate performance.

While the President makes his certification determinations based on a country's compliance with all aspects of the 1988 UN drug convention, bilateral agreements, other multilateral agreements, and the elimination of corruption, there are specific areas of interest that we will highlight during the certification process. The United States believes the following actions could be taken:

11. **SAIA Institutional Building:** Adopt formal regulations to govern SAIA activities and operations based on the regulations and policies used by the National Civilian Police. Policies should include regular polygraphs and urinalysis, as well as mechanisms to promote greater cooperation between the SAIA and the Anti-Narcotics Prosecutors.

12. **Significant Increase in Seizures, Arrests and Prosecutions:** Increased development and prosecution of cases against those involved in narco-trafficking and other types of organized crime. Guatemala should increase security measures to protect judges and prosecutors. Cocaine seizures should return to CY2000 levels, which averaged 800 kilos or more per month, with a significant seizure at ports of entry at least every two months.

13. **Inventory and Destroy All Drugs Seized before 1999 and Increase Warehouse Security:** Destroy all seized drugs not needed for evidence by April 30th, and develop and implement security measures for drug warehouses. Establish clear procedures for chain of custody, evidence handling, and drug destruction.

14. **Sign the Counter-narcotics Bilateral Maritime Agreement with the U.S.:** Guatemala should negotiate and sign a counter-narcotics bilateral maritime agreement with the USG.

15. Search Warrants: Guatemala should develop a mechanism that ensures that narcotics search warrants are issued in a timely and secure fashion.

16. Successful Completion of Extradition Requests: Guatemala should fully process all pending U.S. extradition requests. Over the coming year, the Government of Guatemala should cooperate in identifying procedures to expedite extradition requests.

17. Successful Promulgation and Implementation of Regulations on Precursor Chemicals: Guatemala should promulgate the implementing regulations that are required by the precursor chemical law of 1999.

18. Seized Assets and Forfeited/Undeclared Cash: Guatemala should adopt and implement legislative and/or procedural reforms for seizing and utilizing in an efficient manner all assets of criminals acquired through criminal activity, and assign these assets to strengthen the Judiciary, the Public Ministry, and the Police, who are battling narco-trafficking and organized crime. Special emphasis should be placed on transferring seized cash into law-enforcement programs.

19. Money Laundering Efforts: Guatemala's money laundering legislation is the best weapon in the fight against corruption and organized crime. Guatemala should assign sufficient personnel who are qualified to the Money Laundering Prosecutor's Office and will make every effort to take cases to trial. The Financial Investigations Unit (IVE), that is part of the Superintendent of Banks (SIB), should share information with the Prosecutor's office in conformance with the Guatemalan money laundering law. These efforts will contribute to Guatemala coming off the Financial Action Task Force (FATF) list of non-cooperating countries in anti-money laundering efforts. Guatemala should take all necessary steps to improve inter-institutional cooperation that will allow for more effective compliance with the money laundering law.

The efforts of U.S. and Guatemalan governments can do much to reduce the threat of drug addiction to the youth of the two countries. The Government of the United States looks forward to continued discussions with the Government of Guatemala on strengthening counter-narcotics cooperation.

The Embassy of the United States of America takes the opportunity to renew to the Ministry of Foreign Affairs of the Government of Guatemala the assurances of its highest consideration.

Embassy of the United States of America, Guatemala City,
March 21, 2003.
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